

Update: Child Protective Proceedings Benchbook (Revised Edition)

CHAPTER 13

Initial Dispositions

13.2 Purpose of Initial Dispositional Hearings

Near the bottom of page 312, insert the following text before the last paragraph:

In *In re AMAC*, ___ Mich App ___ (2006), the Court of Appeals reversed the trial court's order terminating respondent's parental rights, finding the trial court's failure to afford respondent a dispositional hearing constituted error. Following the child's birth, the Department of Human Services filed a petition seeking termination of respondent's parental rights based on prior voluntary terminations of her parental rights and other grounds. At the conclusion of the adjudicative hearing, the trial court issued a written opinion and order terminating respondent's parental rights without conducting a dispositional hearing. The Court of Appeals emphasized that "[t]he dispositional phase is particularly important when permanent termination is sought and the respondent entered a plea of admission, a plea of no contest, or when one of the statutory grounds for termination is clearly and convincingly established during the adjudicative phase because it provides the respondent with an opportunity to persuade the court that, although a statutory ground for termination is met, termination is not in the best interests of the child." The failure to afford respondent a dispositional hearing precluded her opportunity to present evidence that may have been either inadmissible or irrelevant in the adjudicative phase of the proceedings to convince the trial court that termination is clearly not in the child's best interests, a right afforded by MCL 712A.19b(5). The Court of Appeals further noted the failure of the trial court to address the child's best interests in its opinion, as required by MCL 712A.19b(1). Consequently, respondent's rights pursuant to MCL 712A.19b(5), MCR 3.973, and MCR 3.977(E) were wrongfully denied, and the Court of Appeals vacated the order terminating respondent's parental rights and remanded the case to the trial court for a dispositional hearing.

CHAPTER 18

Hearings on Termination of Parental Rights

18.1 When the Court May Consider a Request for Termination of Parental Rights

Near the bottom of page 374, insert the following case summary after the first paragraph:

The Court of Appeals reversed a trial court's order terminating parental rights, determining the trial court erred in failing to provide the respondent a dispositional hearing in accordance with MCR 3.973. *In re AMAC*, ___ Mich App ___, ___ (2006). The Court of Appeals emphasized that "[t]he dispositional phase is particularly important when permanent termination is sought and the respondent entered a plea of admission, a plea of no contest, or when one of the statutory grounds for termination is clearly and convincingly established during the adjudicative phase because it provides the respondent with an opportunity to persuade the court that, although a statutory ground for termination is met, termination is not in the best interests of the child."

In *AMAC*, the Department of Human services filed a petition seeking termination of respondent's parental rights after the birth of the child based on prior voluntary terminations of her parental rights and other grounds. The trial court improperly entered an opinion and order terminating respondent's parental rights following an adjudicative trial without conducting a dispositional hearing as required by MCR 3.973. Based on the erroneous denial of respondent's rights under MCL 712A.19b(5), MCR 3.973, and MCR 3.977(E), the Court of Appeals vacated the order terminating respondent's parental rights to the child and remanded the matter for a dispositional hearing.

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CHAPTER 2

Reporting & Investigating Suspected Child Abuse & Neglect

2.23 Liability and Immunity

C. Immunity Under MCL 691.1407

On page 65, add the following text immediately before subsection (D):

In *Beauford v Shakoore*, ___ Mich App ___, ___ (2005), the Court extended absolute immunity to a CPS worker who conducted an investigation of alleged child abuse and recommended termination of the plaintiff's parental rights. The Court rejected the plaintiff's argument that *Martin v Children's Aid Society*, 215 Mich App 88 (1996), did not apply because the investigation was not ordered or monitored by the court that conducted the child protective proceeding. In *Beauford*, the Court of Appeals concluded that CPS workers, like the social workers in *Martin*, acted as "advisors and agents" to the family court, and that the family court's review of CPS investigations and recommendations provided parents with a sufficient remedy.

CHAPTER 4

Jurisdiction, Venue, & Transfer

4.15 Procedures for Handling Interstate Cases

On page 108, after the **Note** in the middle of the page, insert the following:

Filing a child support complaint under the Uniform Interstate Family Support Act (UIFSA), MCL 552.1101 et seq., does not constitute initiation of a “child custody proceeding” under the UCCJEA. *Fisher v Belcher*, ___ Mich App ___, ___ (2005). In *Fisher*, the Court noted that the definition of “child custody proceeding” in MCL 722.1102(d) does not include support actions, and that the definition of “child custody determination” in MCL 722.1102(c) specifically precludes “order[s] relating to child support” Thus, because the support action filed in Michigan was not a “child custody proceeding,” and because a paternity action and request for custody was filed in Missouri, the Michigan court properly dismissed the petition for jurisdiction under the UCCJEA pursuant to MCL 722.1206(2). *Fisher, supra*, at ___.

CHAPTER 10

Pleas of Admission or No Contest

10.6 Withdrawal of Pleas

Effective January 1, 2006, MCR 6.311 was eliminated. At the top of page 245, at the end of the first sentence, delete the reference to MCR 6.311.